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the establishment of the road, the burden of proof is on the landowners to overcome the *prima facie* case made by the report of the viewers.

2. Where, on proceedings for the establishment of a public road, it appears that it will be free and common to all citizens, it is a public road, notwithstanding it will be a greater benefit to the applicant than to the public generally.

3. Under Code 1887, section 1078, relative to the establishment of public roads, and providing that a landowner whose land is taken shall receive compensation for the land taken, and for the damage to the residue beyond the peculiar benefits to be derived in respect to the residue, the benefits are to be confined to such as are direct and peculiar to the landowner, as distinguished from those benefits shared by him in common with other citizens.

4. Code 1887, section 1078, provides that, on the laying out of a public road, a landowner whose land is condemned shall receive just compensation for the land taken, and for the damage to the residue of the tract beyond the peculiar benefits to be derived in respect to such residue. *Held*, that where the object of a road over the lands of an individual was to enable others to reach mountain lands for grazing purposes, and the road extended no farther than the grazing lands, and afforded the landowner no outlet in that direction, and the necessities of his own land were already provided for by a private road, the allowance to him of damages in a sum not sufficient to enable him to protect his property by the erection of fences along the sides of the public road—he having, over his protest, been subjected to the inconveniences of a pent or gated road—was erroneous.

HYATT v. ZION et al.

June 23, 1904.

DEED OF TRUST—EXECUTION BY WIFE—MISREPRESENTATION OF HUSBAND—
ESTOPPEL—RIGHTS OF BENEFICIARY—CONSIDERATION—AGENCY.

1. Where complainant's husband, in order to secure a debt which he owed to a bank, induced complainant to sign a deed of trust on certain land owned by them jointly, the husband in such transaction did not act as agent of the bank, so as to charge it with his false representations made to induce her to sign the deed.

2. Where a bank, on the faith of a deed of trust executed by its debtor and his wife to secure a debt, extended further time to the husband, took a note without an indorser, and surrendered notes on which it claimed and believed that another was liable as indorser, the bank parted with a sufficient consideration to entitle it to claim that the debtor's wife was estopped to have the deed set aside on the ground that she had been induced to sign the same without reading it by the false representation of her husband that it related to property in which she had no interest except a contingent right of dower.

3. Where a wife signed a deed of trust without reading it, relying on

her husband's false representation that it related to property in which she had no interest other than a contingent right of dower, she was estopped to deny the validity of the deed as against the beneficiary.

HAMBURG-BREMEN FIRE INS. CO. v. BROWNING.

June 23, 1904.

INSURANCE—CANCELLATION.

1. A policy of insurance was canceled when the agent advised the insured to that effect, and that the amount covering the unearned premium would be remitted to him upon receipt of the policy, especially as the amount of the unearned premium was not sufficient to keep the policy alive until the date of the fire.

ANDERSON'S ADM'R. et al. v. SMITH et al.

June 16, 1904.

WILL—SUPPRESSION—FRAUD—EVIDENCE—GUARDIAN DE FACTO—JUDGMENTS.

1. Evidence *held* to show a fraudulent conspiracy to suppress a will, and deprive certain devisees of the benefit thereof.

2. One who enters upon the estate of an infant will be treated in equity as a guardian *de facto*, and held responsible for its rents, issues, and profits.

3. A judgment against several parties for a liability arising out of a fraudulent conspiracy should be against them jointly and severally.